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President, CEO, and Chair

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General Services Administration  
FAR Secretariat (MVP)  
1800 F Street, NW, Room 4035  
Washington, DC 20405

ATTN: Laura Duarte

SUBJ: Comments On The Proposed Revocation of the Contractor Responsibility, Labor Relations Cost, and Costs Relating to Legal and Other Proceedings Regulation (FAR Case 2001-014)

Dear Ms. Duarte:

We are writing to comment on FAR Case 2001-014 (Proposed Revocation) regarding contractor responsibility, labor relations costs and costs relating to legal and other proceedings. We strongly support the revocation of the final rule published December 20, 2000 by the Federal Acquisition Regulatory Council (FAR Council) at 65 Fed.Reg. 80255.

In the April 3, 2001 Federal Register, the FAR Council sighted the following points that led to its decision to stay implementation of the Final Rule and reassess its position:

- 1) It is unclear that the added categories of covered laws and the implementing certifications are justified;
- 2) It is unclear that the rule provides contracting officers (COs) with sufficient guidelines to prevent arbitrary or otherwise abusive implementation;
- 3) It is unclear that the final rule is justified from a cost-benefit perspective;
- 4) The 30-day effective date did not give contractors or the Government sufficient time to meet the new obligations and responsibilities imposed by the final rule;
- 5) Suspension and Debarment procedures may be a more appropriate and effective way to deal with contractors that have a pattern of violations in the areas of laws cited.

The December 20, 2000 final rule is fatally flawed because the FAR Council ignored the requirements of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. §603. Contrary to the RFA, the FAR Council did not articulate a rational need for the Proposed Rule; failed to adequately evaluate the Rule's compliance costs; and failed to assess the Rule's impact on overlapping federal laws and regulations. Furthermore, the FAR Council did not conduct a meaningful analysis of the impact the proposed rule would have on small businesses, and failed to consider whether less burdensome

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alternatives were available. The FAR Council's reflections on its position in the April 3, 2001 Federal Register pointedly exposes the errors in its Initial Regulatory Flexibility Analysis ("IRFA").

In addition to the serious RFA deficiencies contained in the FAR Council's approach, we believe that on a practical level, the December 20, 2000 final rule is vague and unworkable in its execution. Attempts to implement this rule would result in:

- Decimation of contractors' willingness to execute self-certifications and lead to a plethora of potential false claims suits against the ones who dare to execute certifications;
- Usurping of legislative authority through administrative rulemaking (made possible by inadequate analysis under the RFA) thereby amending public law;
- Destruction of the link between a violation and a properly prescribed remedy; and
- Serious concerns about due process.

We believe that the only prudent solution is to rescind the December 20, 2000 rule. Effective frameworks are already in place to deal with contractor responsibility and cost allowability. This rule is a misguided attempt to fix a system that is not broken.

Sincerely,

AmerInd, Inc.



Patricia J. Parson  
President, CEO and Chair